

ARTICLE 75-04

DEVELOPMENTAL DISABILITIES

Chapter

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CHAPTER 75-04-01

LICENSING OF PROGRAMS AND SERVICES FOR INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES

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75-04-01-01. Definitions. In this chapter, unless the context or subject matter requires otherwise:

1. "Accreditation" means recognition by a national organization of a licensee's compliance with a set of specified standards.
2. "Applicant" means an entity which has requested licensure from the North Dakota department of human services pursuant to North Dakota Century Code chapter 25-16.
3. "Basic services" means those services required to be provided by an entity in order to obtain and maintain a license.
4. "Case management" means a process of interconnected steps which will assist a client in gaining access to needed services, including medical, social, educational, and other services, regardless of the funding source for the services to which access is gained.
5. "Client" means an individual found eligible as determined through the application of North Dakota Administrative Code chapter 75-04-06 for services coordinated through developmental disabilities case management.
6. "Congregate care" means a specialized program to serve elderly individuals with developmental disabilities whose health and medical conditions are stable and do not require continued nursing and medical care, and are served within a community group-living arrangement.

7. "Day supports" means a day program to assist individuals in acquiring, retaining, and improving skills necessary to successfully reside in a community setting. Services may include assistance with acquisition, retention, or improvement in self-help, socialization, and adaptive skills; provision of social, recreational, and therapeutic activities to maintain physical, recreational, personal care, and community integration skills; and development of non-job task-oriented prevocational skills such as compliance, attendance, task completion, problem solving, and safety; and supervision for health and safety.
8. "Department" means the North Dakota department of human services.
9. "Developmental disability" means a severe, chronic disability of an individual which:
 - a. Is attributable to a mental or physical impairment or combination of mental and physical impairments;
 - b. Is manifested before the individual attains age twenty-two;
 - c. Is likely to continue indefinitely;
 - d. Results in substantial functional limitations in three or more of the following areas of major life activity:
 - (1) Self-care;
 - (2) Receptive and expressive language;
 - (3) Learning;
 - (4) Mobility;
 - (5) Self-direction;
 - (6) Capacity for independent living; and
 - (7) Economic sufficiency; and
 - e. Reflects the individual's needs for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated.
10. "Extended services" means a federally mandated component designed to provide employment-related, ongoing support for an individual in supported employment upon completion of training; or on or off the job employment-related support for individuals needing intervention to assist them in maintaining employment. This may include job

development, replacement in the event of job loss, and, except for those individuals with serious mental illness, must include a minimum of two onsite job skills training contacts per month and other support services as needed to maintain employment. It may also mean providing other support services at or away from the worksite. If offsite monitoring is appropriate, it must, at a minimum, consist of two meetings with the individual and one contact with the employer each month.

11. "Family support services" means a family-centered support service contracted for a client based on the primary caregiver's need for support in meeting the health, developmental, and safety needs of the client in order for the client to remain in an appropriate home environment.
12. "Governing body" means the individual or individuals designated in the articles of incorporation of a corporation or constitution of a legal entity as being authorized to act on behalf of the entity.
13. "Group home" means any community residential service facility, licensed by the department pursuant to North Dakota Century Code chapter 25-16, housing more than four individuals with developmental disabilities. "Group home" does not include a community complex with self-contained rental units.
14. "Individualized supported living arrangements" means a residential support services option in which services are contracted for a client based on individualized needs resulting in an individualized ratesetting process and are provided to a client in a residence rented or owned by the client.
15. "Infant development" means a systematic application of an individualized family service plan designed to alleviate or mediate developmental delay of the client from birth through age two.
16. "Intermediate care facility for individuals with intellectual disabilities" means a residential health facility operated pursuant to regulation under 42 CFR 442 and 483, et seq.
17. "License" means authorization by the department to provide a service to individuals with developmental disabilities, pursuant to North Dakota Century Code chapter 25-16.
18. "Licensee" means that entity which has received authorization by the department, pursuant to North Dakota Century Code chapter 25-16, to provide a service or services to individuals with developmental disabilities.

19. "Mental retardation" means a diagnosis of the condition of mental retardation, based on an individually administered standardized intelligence test and standardized measure of adaptive behavior, and made by an appropriately licensed professional.
20. "Minimally supervised living arrangements" means either:
 - a. A group home with an available client adviser; or
 - b. A community complex that provides self-contained rented units with an available client adviser.
21. "Principal officer" means the presiding member of a governing body, a chairperson, or president of a board of directors.
22. "Resident" means an individual receiving services provided through any licensed residential facility or service.
23. "Standards" means requirements which result in accreditation by the council on quality and leadership in supports for people with disabilities, certification as an intermediate care facility for individuals with intellectual disabilities, or for extended service results in accreditation by the commission on accreditation of rehabilitation facilities.
24. "Supported living arrangement" means a program providing a variety of types of living arrangements that enable individuals with disabilities to have choice and options comparable to those available to the general population. Clients entering this service shall have the effects of any skill deficits subject to mitigation by the provision of individualized training and follow-along services.
25. "Transitional community living facility" means a residence for clients with individualized programs consisting of social, community integration, and daily living skills development preliminary to entry into less restrictive settings.

History: Effective April 1, 1982; amended effective June 1, 1986; December 1, 1995; April 1, 2000; July 1, 2001; July 1, 2012.

General Authority: NDCC 25-01.2-18, 25-16-06, 50-06-16

Law Implemented: NDCC 25-01.2-18, 25-16-06

75-04-01-02. License required. No individual, association of individuals, partnership, limited liability company, or corporation shall offer or provide a service or own, manage, or operate a facility offering or providing a service to more than four individuals with developmental disabilities without first having obtained a license from the department unless the facility is:

1. Exempted by subsection 1 or 2 of North Dakota Century Code section 15-59.3-02;

2. A health care facility, as defined in North Dakota Century Code section 23-17.2-02, other than an intermediate care facility for individuals with intellectual disabilities; or
3. Operated by a nonprofit corporation that receives no payments from the state or any political subdivision and provides only day supports for six or fewer individuals with developmental disabilities. "Payment" does not include donations of goods and services or discounts on goods and services.

Licensure does not create an obligation for the state to purchase services from the licensed facility.

History: Effective April 1, 1982; amended effective June 1, 1986; December 1, 1995; July 1, 2001; July 1, 2012.

General Authority: NDCC 25-01.2-18, 25-16-06, 50-06-16

Law Implemented: NDCC 25-01.2-18, 25-16-02

75-04-01-03. Single or multiple license. A single license may be issued authorizing the conduct of multiple services by one applicant or single licenses may be issued authorizing the conduct of each discrete service, at the discretion of the department.

History: Effective April 1, 1982.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-03

75-04-01-04. License denial, suspension, or revocation. The department may deny a license to an applicant or suspend or revoke an existing license upon a finding of noncompliance with the rules of the department.

History: Effective April 1, 1982; amended effective June 1, 1986.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-03, 25-16-08

75-04-01-05. Notification of denial, suspension, or revocation of license.

1. The department shall, within sixty days from the date of the receipt of an application for a license, or upon finding a licensee in noncompliance with the rules of the department, notify the applicant or licensee's principal officer of the department's intent to grant, deny, suspend, or revoke a license.
2. The department shall notify the applicant or licensee in writing. Notification is made upon deposit with the United States postal service. The notice of denial, suspension, or revocation shall identify any rule or standard alleged to have been violated and the factual basis for the

allegation, the date after which the denial, suspension, or revocation is final, and the procedure for appealing the action of the department.

3. The applicant or licensee may appeal the denial, suspension, or revocation of a license by written request for an administrative hearing, mailed or delivered to the department within ten days of receipt of the notice of intent to deny, suspend, or revoke. The hearing must be governed by the provisions of chapter 75-01-03.

History: Effective April 1, 1982; amended effective June 1, 1986; December 1, 1995.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-08

75-04-01-06. Disclosure of criminal record.

1. Each member of the governing body of the applicant, the chief executive officer, and any employees or agents who receive and disburse funds on behalf of the governing body, or who provide any direct service to clients, shall disclose to the department any conviction of a criminal offense.
2. The applicant or licensee shall conduct criminal background checks on all persons employed who work with clients.
3. The applicant or licensee shall disclose to the department the names, type of offenses, dates of conviction, and position and duties within the applicant's organization of employees with a criminal record.
4. Such disclosure must not disqualify the applicant from licensure, unless the conviction is for a crime having direct bearing on the capacity of the applicant to provide a service under the provision of this chapter and the convicted individual is not sufficiently rehabilitated under North Dakota Century Code section 12.1-33-02.1.
5. The department shall determine the effect of a conviction of an offense.

History: Effective April 1, 1982; amended effective June 1, 1986; December 1, 1995; April 1, 2000.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-03.1

75-04-01-06.1. Criminal conviction - Effect on operation of facility or employment by facility.

1. A facility operator may not be, and a facility may not employ in any capacity that involves or permits contact between the employee and any individual cared for by the facility, an individual who is known to have been found guilty of, pled guilty to, or pled no contest to:

- a. An offense described in North Dakota Century Code chapters 12.1-16, homicide; 12.1-17, assaults - threats - coercion if a class A misdemeanor or a felony; or 12.1-18, kidnapping; North Dakota Century Code sections 12.1-20-03, gross sexual imposition; 12.1-20-04, sexual imposition; 12.1-20-05, corruption or solicitation of minors; 12.1-20-06, sexual abuse of wards; 12.1-20-07, sexual assault; 12.1-22-01, robbery; or 12.1-22-02, burglary, if a class B felony under subdivision b of subsection 2 of that section; North Dakota Century Code chapter 12.1-27.2, sexual performances by children; or North Dakota Century Code sections 12.1-29-01, promoting prostitution; 12.1-29-02, facilitating prostitution; or 12.1-31-05, child procurement; or an offense under the laws of another jurisdiction which requires proof of substantially similar elements as required for conviction under any of the enumerated North Dakota statutes; or
 - b. An offense, other than an offense identified in subdivision a, if the department determines that the individual has not been sufficiently rehabilitated.
2. For purposes of subdivision b of subsection 1, an offender's completion of a period of five years after final discharge or release from any term of probation, parole, or other form of community correction, or imprisonment, without subsequent conviction, is prima facie evidence of sufficient rehabilitation.
 3. The department has determined that the offenses enumerated in subdivision a of subsection 1 have a direct bearing on the individual's ability to serve the public in a capacity involving the provision of services to individuals with developmental disabilities.
 4. An individual is known to have been found guilty of, pled guilty to, or pled no contest to an offense when it is:
 - a. Common knowledge in the community;
 - b. Acknowledged by the individual; or
 - c. Reported to the facility as the result of an employee background check.

History: Effective July 1, 2001.

General Authority: NDCC 25-01.2-18, 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-03, 25-16-03.1

75-04-01-07. Content of license. A license issued by the department must include the legal name of the licensee, the address or location where services are

provided, the occupancy or service limitations of the licensee, and the expiration date of the license.

History: Effective April 1, 1982; amended effective December 1, 1995.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-05

75-04-01-08. Types of licenses.

1. A license issued pursuant to this chapter must be denominated "license", "provisional license", or "special provisional license".
2. A "license" is unrestricted. The department shall issue a license to any applicant who complies with the rules and regulations of the department and North Dakota Century Code section 25-16-03, and who is accredited by the accreditation council for services for individuals with disabilities, or for extended services accredited by the rehabilitation accreditation commission (CARF). The license is nontransferable, expires not more than one year from the effective date of the license, and is valid for only those services or facilities identified thereon.
3. A "provisional license" may be issued subject to the provision of section 75-04-01-09.
4. A "special provisional license" may be issued subject to the provision of section 75-04-01-10.

History: Effective April 1, 1982; amended effective June 1, 1986; December 1, 1995.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-03

75-04-01-09. Provisional license.

1. A provisional license may be issued to an applicant notwithstanding a finding of noncompliance with the rules of the department and North Dakota Century Code section 25-16-03. A provisional license must not be issued to an applicant whose practices or facilities pose a clear and present danger to the health and safety of individuals with developmental disabilities.
2. Upon a finding that the applicant is not in compliance with the rules, the department may notify the applicant, in writing, of its intent to issue a provisional license. The notice must provide the reasons for the action and must describe the corrective actions required of the applicant, which, if taken, will result in the issuance of an unrestricted license.
3. The applicant shall, within ten days of the receipt of notice under subsection 2, submit to the department, on a form provided, a plan

of correction. The plan of correction must include the elements of noncompliance, a description of the corrective action to be undertaken, and a date certain of compliance. The department may accept, modify, or reject the applicant's plan of correction. If the plan of correction is rejected, the department shall notify the applicant that the license has been denied or revoked. The department may conduct periodic inspection of the facilities and operations of the applicant to evaluate the implementation of a plan of correction.

4. A provisional license may be issued for any period not exceeding one year. A provisional license may be renewed only upon successful completion of an accepted plan of correction. A provisional license is nontransferable and valid only for the facilities or services identified thereon. Notice of the granting of a provisional license, or of a decision to modify or reject a plan of correction, may be appealed in the same manner as a notice of denial or revocation of a license.

History: Effective April 1, 1982; amended effective June 1, 1986; December 1, 1995.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-03

75-04-01-10. Special provisional license.

1. A licensee or applicant may submit an application, on a form provided, for a special provisional license, permitting the provision of a new service, the occupancy of a facility, or the vacation of a facility provided that:
 - a. The new service is in conformity with the service definitions of these rules or is a service designed by and recognized through policy issued by the developmental disabilities division of the department and, upon completion of the rule promulgation process, will be a service able to be licensed under this chapter; or
 - b. The issuance of the special provisional license is required by a natural disaster, calamity, fire, or other dire emergencies.
2. A special provisional license issued for this purpose must include the dates of issuance and expiration, a description of the service or facility authorized, an identification of the licensee to whom the special provisional license is issued, and any conditions required by the department.

History: Effective April 1, 1982; amended effective December 1, 1995.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-03

75-04-01-11. License renewal. The licensee shall submit to the department, on a form or forms provided, an application for a license not later than sixty days prior to the expiration date of a valid license.

History: Effective April 1, 1982.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-03

75-04-01-12. Display of license. The licensee shall place any license, provisional license, or special provisional license in an area accessible to the public and where it may be readily seen. Licenses need not be placed on display in residences or residential areas of a facility, but must be available to the public or the department upon request.

History: Effective April 1, 1982.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-03

75-04-01-13. Purchase of service or recognition of unlicensed entities. The department shall not recognize or approve the activities of unlicensed entities in securing public funds from the United States, North Dakota, or any of its political subdivisions, nor shall it purchase any service from such entities.

History: Effective April 1, 1982; amended effective June 1, 1986.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-10

75-04-01-14. Unlicensed entities - Notification. Upon a determination that activities subject to licensure are occurring or have occurred, the department shall notify the parties thereto that the activities are subject to licensure. The notice must include a citation of the applicable provisions of these rules, an application for a license, a date certain when the application must be submitted, and, if applicable, a request for the parties to explain that the activities identified in the notification are not subject to licensure.

History: Effective April 1, 1982; amended effective December 1, 1995.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-10

75-04-01-15. Standards of the department. The department herein adopts and makes a part of these rules for all licensees the current standards used for accreditation by the council on quality and leadership in supports for people with disabilities, additionally, for intermediate care facilities for individuals with intellectual disabilities, standards for certification under 42 CFR 442 and 483 et seq., or for extended service, by the rehabilitation accreditation commission (CARF). If a licensee fails to meet an accreditation standard, the department may analyze the licensee's failure using the appropriate 1990 standards of the council on quality and leadership in supports for people with disabilities. Infant development licensees who have attained accreditation status by the council on

quality and leadership in supports for people with disabilities are not required to maintain accreditation status.

History: Effective April 1, 1982; amended effective June 1, 1986; December 1, 1995; April 1, 2000; May 1, 2006; July 1, 2012.

General Authority: NDCC 25-01.2-18, 25-16-06, 50-06-16

Law Implemented: NDCC 25-01.2-18, 25-16-06

75-04-01-16. Imposition of the standards. Unaccredited applicants issued a provisional license shall provide the department with a plan to secure accreditation. The licensee, upon request of the department, shall submit copies of reports generated by the accreditation process.

History: Effective April 1, 1982; amended effective June 1, 1986.

General Authority: NDCC 25-01.2-18, 25-16-06, 50-06-16

Law Implemented: NDCC 25-01.2-18, 25-16-06

75-04-01-17. Identification of basic services subject to licensure. Services provided to more than four individuals with developmental disabilities in treatment or care centers must be identified and licensed by the following titles:

1. Residential services:
 - a. Individualized supported living arrangement;
 - b. Community intermediate care facility for individuals with intellectual disabilities of fifteen beds or less;
 - c. Institutional intermediate care facility for individuals with intellectual disabilities of sixteen or more beds;
 - d. Minimally supervised living arrangement;
 - e. Transitional community living facility;
 - f. Supported living arrangement;
 - g. Family support services; or
 - h. Congregate care.
2. Day services:
 - a. Day supports;
 - b. Extended service; or

C. Infant development.

History: Effective April 1, 1982; amended effective June 1, 1986; December 1, 1995; July 1, 1996; July 1, 2001; July 1, 2012.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-06

75-04-01-18. Identification of ancillary services subject to registration.
Repealed effective June 1, 1986.

75-04-01-19. Licensure of intermediate care facilities for the developmentally disabled. Repealed effective June 1, 1986.

75-04-01-20. Applicant guarantees and assurances.

1. Applicants shall submit, in a manner prescribed by the department, evidence that policies and procedures approved by the governing body are written and implemented in a manner which:
 - a. Guarantees each client an individual program plan pursuant to the provisions of North Dakota Century Code section 25-01.2-14;
 - b. Guarantees that each client, parent, guardian, or advocate receives written notice of the client's rights in the manner provided by North Dakota Century Code section 25-01.2-16;
 - c. Guarantees that each client admission is subject to a multidisciplinary determination that placement is appropriate pursuant to North Dakota Century Code section 25-01.2-02;
 - d. Guarantees the client the opportunity to vote, to worship, to interact socially, to freely communicate and receive guests, to own and use personal property, to unrestricted access to legal counsel, and guarantees that all rules regarding such conduct are posted or made available pursuant to North Dakota Century Code sections 25-01.2-04 and 25-01.2-05;
 - e. Guarantees that such restrictions as may be imposed upon a client relate solely to capability and are imposed pursuant to the provisions of an individual program plan;
 - f. Guarantees the confidentiality of all client records;
 - g. Guarantees that the client receives adequate remuneration for compensable labor, that subminimum wages are paid only pursuant to 29 CFR 525, et seq., that restrictions upon client access to money are subject to the provisions of an individual program plan, that assets managed by the applicant on behalf

of the client inure solely to the benefit of that client, that each client has a money management plan or documented evidence of the client's capacity to manage money, and that, in the event the applicant is a representative payee of a client, the informed consent of the client is obtained and documented;

- h. Guarantees the client access to appropriate and timely medical and dental care and adequate protection from infectious and communicable diseases, and guarantees effective control and administration of medication, as well as prevention of drug use as a substitute for programming;
- i. Guarantees the client freedom from corporal punishment, guarantees the client freedom from imposition of isolation, seclusion, chemical, physical, or mechanical restraint, except as prescribed by North Dakota Century Code section 25-01.2-10 or these rules, and guarantees the client freedom from psychosurgery, sterilization, medical behavioral research, pharmacological research, and electroconvulsive therapy, except as prescribed by North Dakota Century Code sections 25-01.2-09 and 25-01.2-11;
- j. Guarantees, where applicable, that a nutritious diet, approved by a qualified dietitian, will be provided in sufficient quantities to meet the client's dietary needs;
- k. Guarantees the client the right to refuse services, the right of the client and the client's representatives to be informed of the possible consequences of the refusal, alternative services available, and specifically, the extent to which such refusal may harm the client or others;
- l. Assures the client safe and sanitary living and working arrangements and provides for emergencies or disasters and first-aid training for staff;
- m. Assures the existence and operation of both behavior management and human rights committees;
- n. Assures that residential services will coordinate with the developmental and remedial services outside the residential setting in which a client lives;
- o. Assures that adaptive equipment, where appropriate for toilet training, toileting, mobility, or eating is provided in the service facility for use by individuals with multiple disabilities;
- p. Assures that all service staff demonstrate basic professional competencies as required by their job descriptions;

- q. Assures that annual evaluations that measure program outcomes against previously stated goals and objectives are conducted;
 - r. Assures that all vehicles transporting clients are subject to routine inspection and maintenance, licensed by the department of transportation, equipped with a first-aid kit and a fire extinguisher, carry no more individuals than the manufacturer's recommended maximum capacity, handicapped accessible, where appropriate, and are driven by individuals who hold a valid state driver's license;
 - s. Assures that an annual inspection with a written report of safety program and practices is conducted in facilities providing day services;
 - t. Guarantees that incidents of alleged abuse and neglect are thoroughly investigated and reported to the governing body, chief executive officer, parent, guardian or advocate, the protection and advocacy project, and the department with written records of these proceedings being retained for three years; guarantees that all incidents of restraint utilized to control or modify a client's behavior are recorded and reported to the governing body; guarantees that any incident resulting in injury to the client or agency staff that requires medical attention or hospitalization must be recorded and reported to the governing body immediately, and as soon thereafter as possible to the parent, guardian, or advocate; and guarantees that incidents resulting in injury to the client or agency staff that requires extended hospitalization, endangers life, or results in permanent disability must also be reported to the department immediately; and
 - u. Guarantees that a grievance procedure, reviewed and approved by the department, affords the client or the client's parent or parents, guardian, or advocate a fair hearing of any complaint; and guarantees that records of such hearings are maintained and must note therein the complaint, the names of the individuals complaining, and the resolution of the grievance.
- 2. Accredited applicants shall submit evidence, satisfactory to the department, of accreditation.
 - 3. The degree to which the unaccredited applicant's policies and procedures are in compliance with the standards must be determined by the department.

History: Effective April 1, 1982; amended effective June 1, 1986; December 1, 1995.

General Authority: NDCC 25-01.2-18, 25-16-06, 50-06-16

Law Implemented: NDCC 25-01.2-18, 25-16-06

75-04-01-20.1. Wages of individuals with developmental disabilities.

Licensees generating income from the direct labor of individuals with developmental disabilities and paying subminimum wages shall submit to the department a true, correct, and current copy of a certificate from the United States department of labor authorizing the payment of subminimum wages.

History: Effective December 1, 1995.

General Authority: NDCC 25-01.2-18, 25-16-06, 50-06-16

Law Implemented: NDCC 25-01.2-18, 25-16-06

75-04-01-20.2. Recording and reporting abuse, neglect, and use of restraint.

1. Licensees shall implement policies and procedures to assure that incidents of alleged abuse and neglect:
 - a. Are reported to the governing board, administrator, parent, guardian, advocate, and the protection and advocacy project;
 - b. Are thoroughly investigated, the findings reported to the governing board, parent, guardian, advocate, and the protection and advocacy project and that the report and the action taken are recorded in writing and retained for three years; and
 - c. Are immediately reported to the department.
2. Licensees shall record and report to the governing board any and all incidents of restraint utilized to control or modify the behavior of individuals with developmental disabilities.
3. Incidents resulting in injury to the staff of the licensee or an individual with developmental disabilities, requiring medical attention or hospitalization, must be recorded and reported to the chairman of the governing board and to the department immediately, and as soon thereafter as possible to the parent, guardian, or advocate.
4. Incidents resulting in injury to the staff of the licensee or an individual with developmental disabilities, which require extended hospitalization, endanger life, or result in a permanent disability, must also be immediately reported to the department.

History: Effective December 1, 1995.

General Authority: NDCC 25-01.2-18, 25-16-06, 50-06-16

Law Implemented: NDCC 25-01.2-18, 25-16-06, 50-25.1-02

75-04-01-21. Legal status of applicant. The applicant shall submit, in a form or manner prescribed by the department, the following items:

1. A correct and current statement of their articles of incorporation, bylaws, license issued by a local unit of government, partnership agreement, or any other evidence of legal registration of the entity;
2. A correct and current statement of tax exempt or taxable status under the laws of North Dakota or the United States;
3. A current list of partners or members of the governing body and any advisory board with their address, telephone number, principal occupation, term of office, and status as a consumer or consumer representative;
4. A statement disclosing the owner of record of any buildings, facilities, or equipment used by the applicant, the relationship of the owner to the applicant, and the cost, if any, of such use to the applicant and the identity of the entity responsible for the maintenance and upkeep of the property;
5. A statement disclosing any financial benefit which may accrue to the applicant or applicants to be diverted to personal use, including director's fees or expenses, dividends, return on investment, rent or lease proceeds, salaries, pensions or annuities, or any other payments or gratuities; and
6. The amount of any payments made to any member or members of the governing board of the applicant or board of a related organization, exclusive of reimbursement for actual and reasonable personal expenses.

History: Effective April 1, 1982; amended effective June 1, 1986; December 1, 1995.

General Authority: NDCC 25-01.2-08, 25-16-06, 50-06-16

Law Implemented: NDCC 25-01.2-08, 25-16-06

75-04-01-22. Applicant's buildings. Applicants occupying buildings, whether owned or leased, must provide the department with a license or registration certificate properly issued pursuant to North Dakota Century Code chapter 15-59.3 or 50-11 or with:

1. The written report of an authorized fire inspector, following an initial or subsequent annual inspection of a building pursuant to section 75-04-01-23, which states:
 - a. Rated occupancy and approval of the building for occupancy; or
 - b. Existing hazards and recommendations for correction which, if followed, would result in approval of the building for occupancy;

2. A statement prepared by a sanitarian or authorized public health officer, following an initial or subsequent annual inspection that the building's plumbing, water supply, sewer disposal, and food storage and handling meet acceptable standards to assure a healthy environment;
3. A written statement prepared by the appropriate county or municipal official having jurisdiction that the premises are in compliance with local zoning laws and ordinances; and
4. For existing buildings, floor plans drawn to scale showing the use of each room or area and a site plan showing the source of utilities and waste disposal; or
5. Plans and specifications of buildings and site plans for facilities, proposed for use, but not yet constructed, showing the proposed use of each room or area and the source of utilities and waste disposal.

History: Effective April 1, 1982; amended effective June 1, 1986; December 1, 1995.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-06

75-04-01-23. Safety codes.

1. Applicant's intermediate care facilities for individuals with intellectual disabilities shall meet the provisions of either the health care occupancies chapters or the residential board and care occupancies chapter of the Life Safety Code of the national fire protection association, 2000 edition, as determined by the department.
2. Applicant's residential service facilities which are not intermediate care facilities for individuals with intellectual disabilities shall meet the applicable life safety standards established by the local governing municipality's ordinances. If the local governing municipality has no ordinances establishing life safety standards, the residential service facilities shall meet the one-family and two-family dwellings chapter of the Life Safety Code of the national fire protection association, 2000 edition, as determined by the department.
3. Upon written application, and good cause shown to the satisfaction of the department, the department may grant a variance from any specific requirement of the Life Safety Code, upon terms the department may prescribe, except no variance may permit or authorize a danger to the health or safety of the residents of the facility.
4. Applicant's facilities housing individuals with multiple physical disabilities or impairments of mobility shall conform to American National Standards Institute Standard No. A117.1 (1980), or, if remodeled or newly constructed after July 1, 1995, with appropriate

standards as required by the Americans with Disabilities Act of 1990, Public Law 101-336.

5. Applicant's and licensee's buildings used to provide day services must conform to the appropriate occupancy chapters of the Life Safety Code of the national fire protection association, 2000 edition, as determined by the department and must meet applicable accessibility standards as required by the Americans with Disabilities Act of 1990, Public Law 101-336. The selection of an appropriate Life Safety Code chapter shall be determined considering:
 - a. Primary activities in the facility;
 - b. The ability of clients occupying the facility to take action for self-preservation in an emergency; and
 - c. Assistance available to clients occupying the facility for evacuation in an emergency.
6. All licensed day service facilities must be surveyed for Life Safety Code compliance at least annually. The department must be notified and a resurvey may be required if any of the following conditions are present between annual inspections:
 - a. Occupancy increases of ten percent or more;
 - b. Primary usage of the facility changes;
 - c. Hazardous materials or processes are introduced into the facility;
 - d. Building alterations or modifications take place;
 - e. Clients requiring substantial assistance to evacuate in an emergency are enrolled;
 - f. There are public or client concerns about safety conditions; or
 - g. Other changes occur in physical facilities, activities, materials and contents, or numbers and capabilities of clients enrolled which may affect safety in an emergency.

History: Effective April 1, 1982; amended effective June 1, 1986; August 1, 1987; December 1, 1995; April 1, 2000; May 1, 2004; July 1, 2012.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-06

75-04-01-24. Entry and inspection. The applicant shall affirm the right of duly authorized representatives of the department to enter any of the

applicant's buildings or facilities to determine the extent to which the applicant is in compliance with the rules of the department, to facilitate verification of the information submitted with an application for licensure, and to investigate complaints. Inspections must be scheduled for the mutual convenience of the department and the provider unless the effectiveness of the inspection would be substantially diminished by prearrangement.

History: Effective April 1, 1982; amended effective December 1, 1995.

General Authority: NDCC 25-01.2-08, 25-16-06, 50-06-16

Law Implemented: NDCC 25-01.2-08, 25-16-06

75-04-01-25. Access to records. The applicant shall affirm the right of duly authorized representatives of the department to inspect the records of the applicant, to facilitate verification of the information submitted with an application for licensure, and to determine the extent to which the applicant is in compliance with the rules of the department.

History: Effective April 1, 1982.

General Authority: NDCC 25-01.2-08, 25-16-06, 50-06-16

Law Implemented: NDCC 25-01.2-08, 25-16-06

75-04-01-26. Denial of access to facilities and records. Any applicant or licensee which denies access, by the authorized representative of the department, to a facility or records, for the purpose of determining the applicant's state of compliance with the rules of the department, shall have its license revoked or its application denied.

History: Effective April 1, 1982; amended effective December 1, 1995.

General Authority: NDCC 25-01.2-08, 25-16-06, 50-06-16

Law Implemented: NDCC 25-01.2-08, 25-16-06

75-04-01-27. Group home design.

1. Group home facilities shall be small enough and of a modest design, minimizing the length of hallways, the number of exterior corners, and the complexity of construction, to ensure the development of meaningful interpersonal relationships and the provision of proper programming, services, and direct care. New or remodeled homes completed after July 1, 1985, are limited to occupancy by no more than eight individuals with developmental disabilities.
2. Group home facilities shall simulate the most homelike atmosphere possible in order to encourage a personalized environment.
3. Group home facilities shall provide, at a minimum, enough living space, based on the needs of both males and females, with provisions for privacy and appropriate access to quiet areas where an individual can be alone.

4. Group home facilities shall provide arrangement of space to permit clients to participate in different kinds of activities, both in groups and singly. Space must be arranged to minimize noise and permit communication at normal conversational levels.
5. Group home facilities shall be accessible to nonambulatory visitors and employees.

History: Effective June 1, 1986; amended effective December 1, 1995.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-03

75-04-01-28. Group home location.

1. Group home facilities shall be located at least three hundred feet [91.44 meters] from hazardous areas, including bulk fuel or chemical storage, anhydrous ammonia facilities, or other fire hazards or sources of noxious or odoriferous emissions.
2. Group home facilities shall not be located in areas subject to adverse environmental conditions, including mud slides, harmful air pollution, smoke or dust, sewage hazards, rodent or vermin infestations, excessive noise, vibrations, or vehicular traffic.
3. Group home facilities shall not be located in an area within the one-hundred-year base flood elevations unless:
 - a. The facility is covered by flood insurance as required by 42 U.S.C. 4101; or
 - b. The finished lowest floor elevation is above the one-hundred-year base flood elevation and the facility is free from significant adverse effects of the velocity of moving water or by wave impact during the one-hundred-year flood.
4. Group home facilities shall be located in residential neighborhoods reasonably accessible to shops, commercial facilities, and other community facilities; and shall be located not less than six hundred feet [182.88 meters] from existing group homes or day service facilities licensed by the department to serve individuals with developmental disabilities, schools for the disabled, long-term care facilities, or other institutional facilities. Upon written application, and good cause shown, the department may grant a variance from the provisions of this subsection upon terms the department may prescribe.

History: Effective June 1, 1986; amended effective December 1, 1995.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-03

75-04-01-29. Group home bedrooms.

1. Bedrooms in group home facilities must accommodate no more than two individuals.
2. Bedrooms in group home facilities must provide at least eighty square feet [7.43 square meters] per individual in a single occupancy bedroom, and at least sixty square feet [5.57 square meters] per individual in a double occupancy bedroom, both exclusive of closet and bathroom space. Bedrooms in newly constructed homes or existing homes converted to group home facilities completed after July 1, 1985, must provide at least one hundred square feet [9.29 square meters] per individual in a single occupancy bedroom, and at least eighty square feet [7.43 square meters] per individual in a double occupancy bedroom, both exclusive of closet and bathroom space.
3. Bedrooms in group home facilities must be located on outside walls and separated from other rooms and spaces by walls extending from floor to ceiling and be at or above grade level.
4. Bedrooms in group home facilities must not have doors with vision panels and must not be capable of being locked, except where individuals may lock their own rooms as consistent with their programs.
5. Bedrooms in group home facilities must provide furnishings which are appropriate to the psychological, emotional, and developmental needs of each individual. Each individual shall be provided a separate bed of proper size and height, a clean comfortable mattress, bedding appropriate to the climate, and a place for personal belongings. Individual furniture, such as a chest of drawers, table, or desk, and an individual closet with clothes racks and shelves must be provided. A mirror must be available to mobile individuals and a tilted mirror must be available to nonambulatory individuals.
6. Bedrooms in group home facilities must provide storage space for clothing in the bedroom which is accessible to all, including nonambulatory individuals.
7. Group home facilities shall provide space outside the bedrooms to be equipped for out-of-bed activities for all individuals not yet mobile, except for those who have a short-term illness or those for whom out-of-bed activity is a threat to life.

History: Effective June 1, 1986; amended effective December 1, 1995.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-03

75-04-01-30. Group home kitchens.

1. Kitchens in group home facilities must provide sufficient space to permit participation by both staff and clients in the preparation of food.
2. Kitchens in group home facilities must provide appropriate space and equipment, including a two-compartment sink, to adequately serve the food preparation and storage requirements of the facility.
3. Kitchens in group home facilities must have hot water supplied to sinks in the range of one hundred ten to one hundred forty degrees Fahrenheit [47.22 to 60 degrees Celsius], as controlled by a tempering valve, located to preclude client access.

History: Effective June 1, 1986; amended effective December 1, 1995.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-03

75-04-01-31. Group home bathrooms.

1. Bathrooms in group home facilities must be located in places that facilitate maximum self-help by clients.
2. Bathrooms in group home facilities must provide showers, bathtubs, and lavatories approximating normal patterns found in homes, unless specifically contraindicated by program needs.
3. Bathrooms in group home facilities must serve only up to four individuals each.
4. At least one bathroom per group home facility must be accessible and usable by nonambulatory visitors and employees.
5. Bathrooms in group home facilities must have hot water supplied to lavatories and bathing facilities in the range of one hundred ten to one hundred forty degrees Fahrenheit [47.22 to 60 degrees Celsius], as controlled by a tempering valve, located to preclude client access.

History: Effective June 1, 1986; amended effective December 1, 1995.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-03

75-04-01-32. Group home laundry.

1. Laundry space within group home facilities must provide a washer and dryer, storage for laundry supplies, accommodations for ironing, and counterspace for folding clothing and linen.

2. Hot water supplied to clothes washers must be in the range of one hundred thirty-five to one hundred forty degrees Fahrenheit [57.22 to 60 degrees Celsius].

History: Effective June 1, 1986; amended effective December 1, 1995.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-03

75-04-01-33. Group home use of space.

1. Group home facilities shall provide free use of space within the living unit, with due regard for privacy, personal possessions, and programs; with limitations of personal areas of supervisory staff.
2. Group home facilities shall provide for an individual to personalize the individual's portion of the living unit and mount pictures on the walls.

History: Effective June 1, 1986; amended effective December 1, 1995.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-03

75-04-01-34. Group home staff accommodations. Repealed effective December 1, 1995.

75-04-01-35. Water supply.

1. Group home facilities for individuals with developmental disabilities shall be located in areas where public or private water supplies approved by the state department of health are available. Approved public water supplies must be used where available.
2. When a private water supply is used, water samples must be submitted at the earliest possible date prior to occupancy and every six months thereafter to determine chemical and bacteriological acceptability.

History: Effective June 1, 1986; amended effective December 1, 1995.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-03

75-04-01-36. Sewage disposal.

1. Group home facilities for individuals with developmental disabilities shall be located in areas where public or private sewage disposal systems approved by the state department of health are available. Approved public sewage disposal systems must be used, where available.
2. Plans and specifications for proposed private sewage disposal system or alteration to such systems must be approved by the state department

of health prior to the construction, maintenance, and operation of such systems.

History: Effective June 1, 1986; amended effective December 1, 1995.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-03

75-04-01-37. Emergency plans. There must be written plans and procedures, which are clearly communicated to and periodically reviewed with staff and clients for meeting emergencies, including fire, serious illness, severe weather, and missing individuals. Applicable requirements of state law and regulations by the state fire marshal and applicable licensing authorities must be met.

History: Effective June 1, 1986; amended effective December 1, 1995.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-03

75-04-01-38. Insurance and bond requirements.

1. Licensees shall secure and maintain insurance and bonds appropriate for the size of the programs, including:
 - a. A blanket fidelity bond equal to not less than ten percent of the total operating costs of the program;
 - b. Property insurance covering all risks at replacement costs and costs of extra expense for loss of use;
 - c. Liability insurance covering bodily injury, property damage, personal injury, teacher liability, professional liability, and umbrella liability as applicable; and
 - d. Automobile or vehicle insurance covering property damage, comprehensive, collision, uninsured motorist, bodily injury, and no fault.
2. The department shall determine the adequacy of the insurance coverages maintained by the applicant.

History: Effective June 1, 1986; amended effective December 1, 1995.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-03

75-04-01-39. Variance. Upon written application and good cause shown to the satisfaction of the department, the department may grant a variance, to an institutional intermediate care facility for individuals with intellectual disabilities, from subsection 1 of section 75-04-01-27, subsections 1, 2, and 3 of section 75-04-01-29, and subsection 3 of section 75-04-01-31, except no variance may

permit or authorize a danger to the health or safety of an individual served by the facility.

History: Effective July 1, 1996; amended effective July 1, 2012.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-06